

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT W. WOOTEN,

Plaintiff,

V.

WASHINGTON CORRECTION CENTER,
SCOTT RUSSELL, FOOD MANAGER
(UNKNOWN), AC COOKS (UNKNOWN),
CORRECTION OFFICERS (UNKNOWN).

Defendants.

No. C12-5838 RBL/KLS

REPORT AND RECOMMENDATION

Noted For: December 21, 2012

Before the Court is Plaintiff's motion for extension of time or alternatively, to voluntarily dismiss without prejudice. ECF No. 10. The undersigned recommends that this case be dismissed without prejudice.

BACKGROUND

On September 27, 2012, Plaintiff filed a prisoner civil rights complaint. ECF No. 5. On October 1, 2012, the Court ordered Plaintiff to show cause why his case should not be dismissed for failure to state a claim or to file an amended complaint by October 26, 2012. ECF No. 7. On October 24, 2012, Plaintiff requested additional time to respond to the Court's Order. ECF No. 8. The Court extended Plaintiff's deadline to November 20, 2012. ECF No. 9.

On November 15, 2012, Plaintiff filed a letter addressed to the undersigned. He states that he suffered a diabetic coma and he is presently being treated in the Washington State Penitentiary clinic. Plaintiff states that it is “almost impossible” to gain access to his legal

1 materials at this time and does not know how long he will need to stay in the clinic. He asks for
2 additional time to perfect his complaint or to dismiss his complaint without prejudice so that he
3 can re-file when his condition is more stable. *Id.*

4 **DISCUSSION**

5 Rule 41 sets forth the circumstances under which an action may be dismissed. Under
6 Rule 41(a)(1), an action may be dismissed by the plaintiff without order of court:

7 (i) by filing a notice of dismissal at any time before service by the adverse party
8 of an answer or of a motion for summary judgment, whichever first occurs, or (ii)
9 by filing a stipulation of dismissal signed by all parties who have appeared in the
action.

10 None of the defendants have been served in this matter. Because Plaintiff is uncertain as
11 to the amount of time he will require before he feels able to address the issues raised in the
12 Court's Order to Show Cause, the undersigned recommends that Plaintiff's request to dismiss his
13 case without prejudice be granted. In his complaint, Plaintiff alleges events that occurred in or
14 around May, 2012. Therefore, he has ample time to re-file his complaint if he chooses to do so.
15 See, e.g., *Rose v. Rinaldi*, 654 F.2d 546, 547 (9th Cir. 1981) (plaintiff has three years to file a 42
16 U.S.C. 1983 action).

17 **WRITTEN OBJECTIONS**

18 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
19 Procedure, the parties shall have fourteen (14) days from service of this Report and
20 Recommendation to file written objections. See also Fed.R.Civ.P. 6. Failure to file objections
21 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140
22 (1985).

1 Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the
2 matter for consideration on **December 21, 2012**, as noted in the caption.
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7 **DATED** this 30th day of November, 2012.
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Karen L. Strombom

United States Magistrate Judge